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 CLERK U.S. DISTRICT COURT  
 CENTRAL DIST. OF CALIF.  
 SANTA ANA

8 UNITED STATES DISTRICT COURT  
 9  
 10 CENTRAL DISTRICT OF CALIFORNIA

11 DEL WEBB COMMUNITIES, INC.,  
 12 an Arizona corporation; DEL WEBB  
 13 HOME CONSTRUCTION, INC., an  
 14 Arizona corporation; PULTE HOME  
 15 CORPORATION, a Michigan  
 16 Corporation,

17 Plaintiffs,

18 v.

19 ARCH INSURANCE COMPANY, a  
 20 Missouri corporation; ACE  
 21 AMERICAN INSURANCE  
 22 COMPANY, a Pennsylvania  
 23 Corporation; NATIONAL UNION  
 24 FIRE INSURANCE COMPANY OF  
 25 PITTSBURGH, PA, a Pennsylvania  
 26 Corporation; LIBERTY MUTUAL  
 27 FIRE INSURANCE COMPANY, a  
 28 Massachusetts Corporation; and DOES  
 1-10, inclusive,

Defendants.

Case No. **SACV13-01767 JVS (RNBx)**  
**COMPLAINT for:**

- (1) Breach of Contract;
- (2) Tortious Breach of the Duty of Good Faith and Fair Dealing; and
- (3) Declaratory Relief—Duty to Defend.

**DEMAND FOR JURY TRIAL**

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 ATTORNEYS AT LAW  
 JAMBOREE CENTER, 4 PARK PLAZA, SUITE 1100  
 IRVINE, CALIFORNIA 92614  
 (949) 851-1100

1 Plaintiffs Del Webb Communities, Inc., Del Webb Home Construction, Inc.,  
2 and Pulte Home Corporation allege as follows:

3  
4 **PARTIES**

5  
6 **THE PLAINTIFFS**

7  
8 1. At all times mentioned herein, Del Webb Communities, Inc. was and is  
9 a corporation incorporated in Arizona; it maintains its corporate headquarters, which  
10 is its center of direction, control and coordination and, thus, is its principal place of  
11 business, in Arizona.

12  
13 2. At all times mentioned herein, Del Webb Home Construction, Inc. was  
14 and is a corporation incorporated in Arizona; it maintains its corporate headquarters,  
15 which is its center of direction, control and coordination and, thus, is its principal  
16 place of business, in Arizona.

17  
18 3. At all times mentioned herein, Pulte Home Corporation was and is a  
19 corporation incorporated in Michigan; it maintains its corporate headquarters, which  
20 is its center of direction, control and coordination and, thus, is its principal place of  
21 business, in Michigan.

22  
23 4. Del Webb Communities, Inc., Del Webb Home Construction, Inc., and  
24 Pulte Home Corporation are collectively referred to as “Del Webb” or “Plaintiffs.”

25  
26 **THE DEFENDANTS**

27  
28 5. Del Webb is informed and believes, and on that basis alleges, that

1 Defendant Arch Insurance Company (“Arch”), at all times mentioned herein was  
2 and is a corporation incorporated in Missouri; it maintains its corporate  
3 headquarters, which is its center of direction, control and coordination and, thus, is  
4 its principal place of business, in Connecticut.

5  
6 6. Del Webb is informed and believes, and on that basis alleges, that  
7 Defendant Ace American Insurance Company (“Ace”), at all times mentioned  
8 herein was and is a corporation incorporated in Pennsylvania; it maintains its  
9 corporate headquarters, which is its center of direction, control and coordination  
10 and, thus, is its principal place of business, in Pennsylvania.

11  
12 7. Del Webb is informed and believes, and on that basis alleges, that  
13 Defendant National Union Fire Insurance Company of Pittsburgh, PA (“National  
14 Union”) at all times mentioned herein was and is a corporation incorporated in  
15 Pennsylvania; it maintains its corporate headquarters, which is its center of  
16 direction, control and coordination and, thus, is its principal place of business, in  
17 New York.

18  
19 8. Del Webb is informed and believes, and on that basis alleges, that  
20 Defendant Liberty Mutual Fire Insurance Company (“Liberty”) at all times  
21 mentioned herein was and is a corporation incorporated in Massachusetts ; it  
22 maintains its corporate headquarters, which is its center of direction, control and  
23 coordination and, thus, is its principal place of business, in Massachusetts.

24  
25 9. Del Webb is unaware of the true names and capacities of DOES 1  
26 through 10, inclusive, whether individual, corporate, associate or otherwise, and  
27 therefore sues these defendants by fictitious names. Del Webb is informed and  
28 believes, and on that basis alleges, that each of the fictitiously named defendants is



1 in some manner responsible for the damage to Del Webb as alleged in this  
2 Complaint. Del Webb will amend this Complaint to show the true names and  
3 capacities of these fictitiously named defendants after the same has been  
4 ascertained.

5  
6 10. Arch, Ace, National Union, and Liberty, and Does 1-10, inclusive, are  
7 hereinafter collectively referred to as "Defendants."

8  
9 **JURISDICTION**

10  
11 11. The amount in controversy exceeds \$75,000 and consists of amounts  
12 that each Defendant separately and independently owes Del Webb for past and  
13 future defense fees and costs incurred by Del Webb in the Ash, Levinson, and  
14 Richards Actions as described more fully below, consequential damages resulting  
15 from Defendants' breach of contract, and extra-contractual damages, including Del  
16 Webb's attorney's fees incurred in prosecuting this action, and punitive damages.  
17 Specifically, Del Webb has incurred more than \$1,000,000.00 in defense-related  
18 expenses in the Ash, Levinson, and Richards Actions collectively, and because they  
19 are ongoing, Del Webb will continue to incur defense-related expenses in the future.

20  
21 12. Plaintiffs are citizens of Arizona and Michigan, and Defendants are  
22 citizens of New York, Massachusetts, Missouri, Connecticut, and Pennsylvania.

23  
24 13. This Court therefore has diversity jurisdiction under 28 U.S.C. § 1332  
25 in that this is a civil action between citizens of different states in which the matter in  
26 controversy exceeds, exclusive of costs and interest, seventy-five thousand dollars.

**VENUE**

14. Del Webb is informed and believes and thereon alleges that all Defendants reside in California because they are subject to personal jurisdiction in the state with respect to this action. In addition, a substantial part of the events or omissions giving rise to this action occurred within this judicial district.

**GENERAL ALLEGATIONS**

**The Sun City Grand Project**

15. Del Webb is a homebuilder that participated in the construction of a residential development known as Sun City Grand, located in Surprise, Arizona (“Sun City Grand”).

16. Del Webb performed no work on the homes at Sun City Grand; instead, all work was performed by subcontractors.

17. AMPAM Riggs Plumbing Inc. f/k/a Keith Riggs Plumbing (“AMPAM”) performed plumbing and related work at Sun City Grand, including but not limited to installing pipes and the “Wirsbo plumbing fitting” in each of the homes constructed at Sun City Grand.

**The AMPAM Policies**

18. AMPAM performed work at Sun City Grand pursuant to one or more written subcontracts that it entered into with Del Webb.

19. Each subcontract required AMPAM to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name Del Webb Corporation, Del Webb's subsidiaries and affiliates, and their respective directors, officers, employees, and agents as "additional insureds" under those insurance policies.

20. AMPAM obtained the following commercial general liability policies from Arch (the "Arch Policies"), Ace (the "Ace Policies"), Liberty (the "Liberty Policies") and National Union (the "National Union Policies") (collectively, "the AMPAM Policies"):

Insurer	Policy Number	Policy Period	Additional Insured
Arch	Unknown	11/1/07 - 11/1/09	Del Webb
Ace	HDOG21703187	11/1/03 - 11/1/07	Del Webb
Liberty	YY7-161-037917-038	09/1/96 - 01/1/99	Del Webb
	RG2-691-004-282-022	11/1/02-11/1/03	
National Union	BE3575142	01/1/99 - 11/1/04	Del Webb
	BE 3464754		
	BE 7404984		
	BE 2195505		
	BE 2977869		



21. The AMPAM Policies were endorsed to cover Del Webb as an “additional insured” with respect to liability arising out of AMPAM’s work.

22. The coverage afforded under the AMPAM Policies requires Defendants Arch, Ace, Liberty, and National Union to pay all sums Del Webb is legally obligated to pay as damages because of property damage or bodily injury during the policy period caused by an occurrence, and arising out of AMPAM’s work.

23. The coverage afforded under the AMPAM policies also requires Defendants Arch, Ace, Liberty and National Union to defend Del Webb against all claims that create potential liability for covered property damage or bodily injury, even if such claims are groundless, false or fraudulent.

### The Underlying Actions

24. Homeowners in Sun City Grand filed a consolidated civil action, *Fern Ash, et al. v. Del Webb Communities, Inc., et al.*, Maricopa County Superior Court Case No. CV-2012-006568 (the “Ash Action”), initiated an arbitration proceeding, *Lawrence and Sharon Levinson, et al. v. Del Webb Communities, Inc., et al.*, American Arbitration Association Case No. 11-527-0130711 (the “Levinson Action”), and filed a class action, *Jerry L. Richards, et al. v. Del Webb Communities, Inc., et al.*, United States District Court for the District of Arizona Case No. CV11-00368-PHX-SMM (the “Richards Action”), against Del Webb alleging, among other things, that the homes at Sun City Grand contained construction deficiencies, that these deficiencies had caused property damage and/or bodily injury, and that Del Webb was liable for these damages.

1           25. The Ash, Levinson, and Richards Actions (collectively, the  
2 “Underlying Actions”) seek damages from Del Webb for property damage and/or  
3 bodily injury arising out of the work, operations or ongoing operations of AMPAM.

4  
5           26. As result of the homeowner claims in the Underlying Actions, Del  
6 Webb has incurred more than \$1,000,000.00 in defense-related expenses in these  
7 Actions collectively.

8  
9           27. Furthermore, because the Underlying Actions are ongoing, Del Webb  
10 will continue to incur additional costs, expenses, and fees in the future, including  
11 possible settlement costs and the costs of a potential judgment.

12  
13 **Defendants Respond to the Underlying Actions**

14  
15           28. Del Webb promptly requested that each Defendant defend Del Webb  
16 against the Underlying Actions. Each Defendant breached its duty to defend Del  
17 Webb by (1) refusing to defend Del Webb, (2) by agreeing to defend Del Webb  
18 against these matters but failing to reimburse any of Del Webb previously-incurred  
19 defense-related expenses or commit to funding Del Webb’s future defense-related  
20 expenses, or (3) never responding at all to Del Webb’s tender of defense.

21  
22           29. More specifically, Defendants Ace and National Union refused to  
23 defend Del Webb against the Underlying Actions; while Defendant Liberty  
24 acknowledged that it owes Del Webb a defense obligation in the Underlying  
25 Actions, but it has delayed and stonewalled paying defense-related expenses.  
26 Defendant Arch failed to provide Del Webb with any coverage position whatsoever.

27  
28           30. As a result of Defendants’ conduct, Del Webb was forced to expend



1 significant resources defending itself against the Underlying Actions.

2  
3 **FIRST CAUSE OF ACTION**

4 **BREACH OF CONTRACT**

5  
6 (By Del Webb Against All Defendants and DOES 1 through 10)

7  
8 31. Del Webb realleges the allegations contained in paragraphs 1 through  
9 30, inclusive, and incorporates them by reference as though fully set forth herein.

10  
11 32. Del Webb requested that Defendants defend Del Webb against the  
12 Underlying Actions as described more fully above. Del Webb has performed all  
13 obligations owing under each of the policies, and has satisfied all relevant  
14 conditions precedent under the Arch, Ace, National Union, and Liberty Policies.

15  
16 33. Defendants have failed to discharge their contractual duties to defend  
17 Del Webb as an additional insured against the Underlying Actions under the Arch,  
18 Ace, National Union, and Liberty Policies.

19  
20 34. More particularly, Ace and National Union breached their contracts by  
21 wrongfully denying a duty to defend Del Webb, while Arch breached its contracts  
22 by not responding at all to Del Webb's tenders, and Liberty breached its contracts  
23 by refusing to pay Del Webb's defense-related expenses, even though Liberty  
24 acknowledged that it is obligated to do so.

25  
26 35. As a direct and proximate result of Defendants' conduct as alleged in  
27 this complaint, Del Webb has been damaged in an amount to be proven at trial.

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**SECOND CAUSE OF ACTION**  
**TORTIOUS BREACH OF THE DUTY OF GOOD FAITH AND FAIR**  
**DEALING**

(By Del Webb Against All Defendants and DOES 1 through 10)

36. Del Webb realleges the allegations contained in paragraphs 1 through 35, inclusive, and incorporates them by reference as though fully set forth herein.

37. Defendants owe Del Webb a duty of good faith and fair dealing, obligating Defendants to put Del Webb's interests equal with or ahead of their own interests and to do nothing to deprive Del Webb of policy benefits.

38. Rather than honor their obligations, Defendants have instead sought to protect their own interests and have subordinated Del Webb's interests by refusing to discharge contractual duties without reasonable grounds or good cause.

39. In addition, Defendants have acted with knowledge or reckless disregard of the harmful consequences to Del Webb of their unreasonable conduct.

40. Accordingly, Defendants have unreasonably deprived Del Webb of its rights and benefits under their policies. For example:

a. Pursuant to clearly applicable law, Defendants Ace and National Union have a duty to defend Del Webb against the Underlying Actions if the homeowner allegations create the potential for an award of covered damages under the Ace and National Union Policies. Defendants also have a duty to rely upon nothing but the policy language, the relevant legal standards, and the facts of the



1 Underlying Actions when making coverage determinations on Del Webb's tenders.  
2 Defendants Ace and National Union understand the scope of their obligations to Del  
3 Webb. Despite this understanding, Defendants Ace and National Union denied Del  
4 Webb's tenders for coverage in the Underlying Actions without reasonable basis. In  
5 addition, on information and belief, Ace and National Union denied coverage to Del  
6 Webb based, not on the application of their policy language and the law to the facts  
7 of the Underlying Actions, but on the significant defense and indemnity costs that  
8 Ace and National Union knew Del Webb will incur defending and settling the  
9 Underlying Actions. On information and belief, Ace and National Union have  
10 experience and/or knowledge of similar construction defects lawsuits involving the  
11 dezincification of plumbing fittings in the southwestern United States and  
12 understand the significant costs associated with defending and settling such claims.  
13 By denying Del Webb's tenders in the Underlying Actions, Defendants Ace and  
14 National Union hoped to avoid costs that they know will be large, even if these  
15 improper coverage decisions injure Del Webb.

16  
17 b. Pursuant to clearly applicable law, Defendant Arch has a duty to  
18 conduct a thorough investigation into Del Webb's tenders for coverage in the  
19 Underlying Actions, make a prompt evaluation of coverage, and provide an  
20 explanation for the reasons that Arch decides to either pay or not pay a specific  
21 claim. Defendant Arch is fully aware of its duty to investigate a tender and make a  
22 prompt evaluation of coverage. Despite this knowledge, Arch has failed to conduct  
23 a reasonable investigation into Del Webb's tender for coverage in the Underlying  
24 Actions, ignored Del Webb's numerous requests for coverage, and failed to provide  
25 Del Webb with an explanation of why it has taken so long to issue a coverage  
26 determination. Arch's conduct is unreasonable and it is motivated by a desire to  
27 avoid paying money on Del Webb's tender, and by a belief that the longer Arch  
28 delayed issuing a coverage decision the greater the chance would be that other



1 insurer carriers would step up and defend Del Webb, obviating Arch's need to do so.  
2 On information and belief, like Ace and National Union, Arch has experience and/or  
3 knowledge of similar construction defects lawsuits involving the dezincification of  
4 plumbing fittings in the southwestern United States and understands the significant  
5 costs associated with defending and settling such claims. By refusing to respond to  
6 Del Webb's tenders in the Underlying Actions, Arch hoped to avoid costs that it  
7 knows are likely to be significant, with full knowledge that Arch's conduct injures  
8 Del Webb.

9  
10 c. Pursuant to clearly applicable law, Defendant Liberty has a duty  
11 to supply Del Webb with an immediate and complete defense against the  
12 Underlying Actions once it acknowledges owing Del Webb a defense in these  
13 matters. Likewise, Liberty has a duty to conduct a thorough investigation into Del  
14 Webb's tenders and to treat Del Webb's tenders with the seriousness and care that  
15 they deserve. Liberty is fully aware of its duty to supply an immediate and complete  
16 defense and to conduct a thorough investigation of all claims that are tendered to it.  
17 Despite this knowledge, Liberty refused to provide Del Webb with an immediate  
18 and complete defense against the Underlying Actions. More specifically, although  
19 Liberty acknowledged on December 17, 2012, that it owed Del Webb a defense  
20 obligation in the Underlying Actions, Liberty has not paid any portion of Del  
21 Webb's previously incurred defense costs, nor will Liberty commit to paying Del  
22 Webb's future defense costs, despite Del Webb's numerous requests that Liberty  
23 tender payment and commit to paying such costs. Liberty's stonewalling and delay  
24 tactics are unreasonable, have no basis in law, and are entirely motivated by  
25 Liberty's desire to limit its monetary exposure to Del Webb without regard to Del  
26 Webb's rights or interests. On information and belief, Del Webb alleges that  
27 Liberty understands the significant costs that Del Webb may incur defending itself  
28 against the Underlying Actions, because Liberty has prior experience and/or

1 knowledge of similar construction defect lawsuits involving the dezincification of  
2 plumbing fittings in the southwestern United States. Liberty has delayed paying Del  
3 Webb in order to buy itself time, since Liberty hopes that if it continues to stonewall  
4 Del Webb – i.e., by agreeing to defend but not paying any defense costs – eventually  
5 other insurance carriers will also agree to defend Del Webb’s in the Underlying  
6 Actions, thereby reducing or eliminating the amounts that Liberty is required to pay  
7 for Del Webb’s defense, in what are likely going to be lengthy and expensive  
8 matters. In addition, as part of its delay tactics, Liberty continually requested that  
9 Del Webb supply information that had little or no relevance to Liberty’s coverage  
10 investigation and which did not impact Liberty’s ability to reimburse Del Webb’s  
11 previously incurred defense costs or implement a system to pay Del Webb’s future  
12 defense costs.

13  
14 d. Pursuant to clearly applicable law, Defendants have a duty to  
15 defend additional insureds, like Del Webb, for claims alleging potential for liability  
16 arising out of the work of their named insureds. Defendants understand and are  
17 fully aware of this duty. Despite knowledge of this obligation, Defendants routinely  
18 attempt to avoid this obligation by taking arbitrary and capricious coverage  
19 positions. More specifically, despite knowledge of the terms of their insurance  
20 policies, additional-insured endorsements, the relevant case law, and the facts  
21 alleged in the Underlying Actions, Defendants refused to acknowledge their duties  
22 to defend Del Webb against the Underlying Actions. Defendants have adopted a  
23 pattern and practice of consistently and intentionally treating Del Webb and other  
24 additional insureds differently from their named insured with respect to the degree  
25 of investigation undertaken, the coverage positions Defendants assert and the  
26 defense they are willing to provide. Likewise, Defendants took coverage positions  
27 in the Underlying Actions that are inconsistent with positions they took in other  
28 similar cases. Defendants’ decisions to deny or delay responding to Del Webb’s



1 tenders were motivated by a desire to enhance unfairly their own profits by avoiding  
2 contractual obligations and ignoring the contractual rights and economic interests of  
3 Del Webb. Defendants acted in a deliberate and concerted fashion to achieve this  
4 self-serving economic objective. Defendants' conduct in this regard tortiously  
5 breaches the duty of good faith and fair dealing owed to Del Webb, and recklessly  
6 disregards Del Webb's economic and property rights.

7  
8 41. Defendants' conduct as alleged in this Complaint is part of a pattern of  
9 unfair claims practices intentionally engaged in by Defendants to enhance unfairly  
10 their own profits by avoiding contractual obligations and ignoring the contractual  
11 rights and economic interests of Del Webb and other additional insureds. These  
12 systematic practices include: (1) wrongfully denying additional insureds coverage  
13 owed under policies; and (2) refusing to supply a full defense to additional insureds  
14 as required by law and instead trying to limit coverage obligations to funding only a  
15 small fraction of the additional insured's defense.

16  
17 42. As a direct and proximate result of Defendants' tortious breach of the  
18 duty of good faith and fair dealing, Del Webb has suffered damages in an amount to  
19 be proven at trial, including without limitation, legal costs incurred to obtain the  
20 benefits of the respective policies.

21  
22 43. In addition, Defendants' conduct as alleged in this Complaint is  
23 despicable and has been carried out in willful and conscious disregard of Del  
24 Webb's rights and economic interests, and is malicious, fraudulent and oppressive.  
25 Accordingly, Defendants' conduct entitles Del Webb to punitive damages.

26  
27 44. Defendants' malicious, fraudulent, and oppressive conduct includes, for  
28 example, the following conduct:



1 a. As described above, Defendants are fully aware of their duty to  
 2 defend additional insureds, like Del Webb, against claims alleging potential liability  
 3 arising out of the work of their named insureds, but routinely attempt to avoid these  
 4 obligations by treating additional insured differently from named insureds.  
 5 Defendants know this behavior violates the rights of additional insureds, like Del  
 6 Webb, but Defendants intentionally try to deprive additional insureds, like Del  
 7 Webb, of policy benefits in order to unfairly enhance their own profits.

8  
 9 b. As described above, Defendants are fully aware of their duty to  
 10 fully defend Del Webb as opposed to only providing a proportional or partial  
 11 defense based on the liability of their named insureds. Defendants know that failing  
 12 to provide Del Webb with a full defense violates its contractual rights, but  
 13 Defendants nonetheless intentionally disavow these duties in willful violation of  
 14 their contractual duties.

15  
 16 **THIRD CAUSE OF ACTION**  
 17 **DECLARATORY RELIEF REGARDING ALL DEFENDANTS' DUTIES TO**  
 18 **DEFEND**

19  
 20 (By Del Webb Against Ace, Arch, National Union and DOES 1 through 10)

21  
 22 45. Del Webb realleges the allegations contained in paragraphs 1 through  
 23 44, inclusive, and incorporates them by reference as though fully set forth herein.

24  
 25 46. An actual controversy has arisen and now exists between Del Webb, on  
 26 the one hand, and Defendants, on the other hand, in that Del Webb contends that  
 27 under the Ace, Arch, and National Union Policies, each Defendant owes a separate  
 28 and independent duty to promptly and fully defend Del Webb in the Underlying

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1 Actions.

2  
3 47. Del Webb is informed and believes that Ace, Arch, and National Union  
4 contend otherwise.

5  
6 48. Del Webb desires a judicial determination as follows:

- 7  
8 a. that each Ace, Arch, and National Union owes a separate and  
9 independent duty to defend Del Webb against the Underlying  
10 Actions;  
11  
12 b. that the scope of this duty is to provide Del Webb with an  
13 immediate and full defense;  
14  
15 c. that the obligations of any one Defendant to provide Del Webb  
16 with an immediate and full defense is not diminished or reduced  
17 when other Defendants owe Del Webb this same duty.

18 49. A declaratory judgment is both proper and necessary so that the  
19 respective rights, duties, and obligations of Del Webb and Ace, Arch, and National  
20 Union may be determined.

21  
22 **PRAYER**

23  
24 WHEREFORE, Del Webb prays for judgment against each Defendant as follows:

25  
26 1. **FIRST CAUSE OF ACTION:**

- a. For general and specific damages in an amount to be proven at trial;
- b. For all costs and expenses at the full extent permitted by law;
- c. For pre-judgment interest and post-judgment interest at the full extent permitted by law;
- d. For attorneys' fees to the extent recoverable by Arizona statute 12-341 or any other applicable law; and
- e. For such other and further relief as the Court deems fair and proper.

2. **SECOND CAUSE OF ACTION:**

- a. For general and specific damages in an amount to be proven at trial;
- b. For punitive damages at the full extent permitted by law;
- c. For all costs and expenses at the full extent permitted by law;
- d. For pre-judgment interest and post-judgment interest at the full extent permitted by law;
- e. For attorneys' fees to the extent recoverable by Arizona statute 12-341 or any other applicable law; and
- f. For such other and further relief as the Court deems fair and



proper.

3. **THIRD CAUSE OF ACTION:**

- a. For declaratory relief as described above;
- b. For all costs and expenses at the full extent permitted by law;
- c. For pre-judgment interest and post-judgment interest at the full extent permitted by law;
- d. For attorneys' fees to the extent recoverable by Arizona statute 12-341 or any other applicable law; and
- e. For such other and further relief as the Court deems fair and proper.

Respectfully submitted,

DATED: November 6, 2013

PAYNE & FEARS LLP

By:



SCOTT S. THOMAS  
NATHAN CAZIER  
JARED DE JONG

Attorneys for Del Webb


**DEMAND FOR JURY TRIAL**

Pursuant to Local Rule 38-1 and Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs Del Webb Communities, Inc., Del Webb Home Construction, Inc., and Pulte Home Corporation respectfully request a jury trial on all issues so triable.

DATED: November 6, 2013

PAYNE & FEARS LLP

By: \_\_\_\_\_

  
SCOTT S. THOMAS  
NATHAN CAZIER  
JARED DE JONG

Attorneys for Del Webb

4826-4752-3862.2

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge James V. Selna and the assigned  
Magistrate Judge is Robert N. Block.

The case number on all documents filed with the Court should read as follows:

SACV13-01767 JVS (RNBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

November 7, 2013

Date

By Maria Barr

Deputy Clerk

---

NOTICE TO COUNSEL

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

**Subsequent documents must be filed at the following location:**

☐ Western Division  
312 N. Spring Street, G-8  
Los Angeles, CA 90012

☒ Southern Division  
411 West Fourth St., Ste 1053  
Santa Ana, CA 92701

☐ Eastern Division  
3470 Twelfth Street, Room 134  
Riverside, CA 92501

**Failure to file at the proper location will result in your documents being returned to you.**



**I. (a) PLAINTIFFS** (Check box if you are representing yourself ☐)

DEL WEBB COMMUNITIES, INC., an Arizona corporation; DEL WEBB HOME CONSTRUCTION, INC., an Arizona corporation; PULTE HOME CORPORATION, a Michigan Corporation,

**DEFENDANTS** (Check box if you are representing yourself ☐)

ARCH INSURANCE COMPANY, a Missouri corporation; ACE AMERICAN INSURANCE COMPANY, a Pennsylvania Corporation; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, a Pennsylvania Corporation; LIBERTY MUTUAL FIRE INSURANCE COMPANY, a Massachusetts Corporation; and DOES 1-10, inclusive,

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

Scott S. Thomas / Nathan A. Cazier/Jared De Jong  
Payne & Fears, LLP  
4 Park Plaza, Suite 1100, Irvine, CA 92614  
(949) 851-1100

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff  
☐ 2. U.S. Government Defendant  
☐ 3. Federal Question (U.S. Government Not a Party)  
☒ 4. Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**-For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant)

- |   |                                       |                                |   |                                |                                       |
|---|---------------------------------------|--------------------------------|---|--------------------------------|---------------------------------------|
| Citizen of This State                   | PTF <input type="checkbox"/> 1        | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4        |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2     | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5     | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3     | Foreign Nation  | <input type="checkbox"/> 6     | <input type="checkbox"/> 6            |

**IV. ORIGIN** (Place an X in one box only.)

- ☒ 1. Original Proceeding  
☐ 2. Removed from State Court  
☐ 3. Remanded from Appellate Court  
☐ 4. Reinstated or Reopened  
☐ 5. Transferred from Another District (Specify)  
☐ 6. Multi-District Litigation

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)**CLASS ACTION under F.R.Cv.P. 23:** ☒ Yes ☐ No**MONEY DEMANDED IN COMPLAINT:** \$ \_\_\_\_\_**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

1) 28 U.S.C. § 1332/Breach of Contract and 2) Tortious Bad Faith

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input checked="" type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<b>Habeas Corpus:</b>	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b>	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	<b>PERSONAL PROPERTY</b>	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 530 General	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<b>Other:</b>	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	<b>BANKRUPTCY</b>	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<b>FORFEITURE/PENALTY</b>	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<b>REAL PROPERTY</b>	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	<b>LABOR</b>	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

**FOR OFFICE USE ONLY:**

Case Number: \_\_\_\_\_

**SACV13-01767 JVS (RNBx)**

## UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

## CIVIL COVER SHEET

**VIII. VENUE:** Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<b>Question A: Was this case removed from state court?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

<b>Question B: Is the United States, or one of its agencies or employees, a party to this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF? Then check the box below for the county in which the majority of DEFENDANTS reside.	A DEFENDANT? Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
	<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western

Question C: Location of plaintiffs, defendants, and claims?	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## C.1. Is either of the following true? If so, check the one that applies:

- ☐ 2 or more answers in Column C
- ☐ only 1 answer in Column C and no answers in Column D

Your case will initially be assigned to the SOUTHERN DIVISION.  
Enter "Southern" in response to Question D, below.

If none applies, answer question C2 to the right. →

## C.2. Is either of the following true? If so, check the one that applies:

- ☐ 2 or more answers in Column D
- ☐ only 1 answer in Column D and no answers in Column C

Your case will initially be assigned to the EASTERN DIVISION.  
Enter "Eastern" in response to Question D, below.

If none applies, go to the box below. ↓

Your case will initially be assigned to the WESTERN DIVISION.  
Enter "Western" in response to Question D below.

<b>Question D: Initial Division?</b>	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Southern Division



## UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

## CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

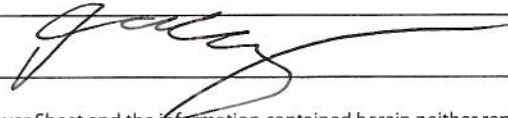
IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

## Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY  
(OR SELF-REPRESENTED LITIGANT):

DATE: 11-6-2013

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))